

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

OLIVIA Y., et al)
)
Plaintiffs)
)
v.) CIVIL ACTION NO. 3:04cv251 TSL-FKB
)
PHIL BRYANT, as Governor of the State of Mississippi, et al.)
)
Defendants)

**DEFENDANTS' RESPONSE AND OBJECTION
TO PLAINTIFFS' MOTION FOR AMENDED
CASE MANAGEMENT ORDER PERMITTING LIMITED DISCOVERY**

Defendants file this Response and Objection to Plaintiffs' Motion for Amended Case Management Order Permitting Limited Discovery.

1. On September 6, 2019, Plaintiffs, with full knowledge that discovery was closed in this case, unilaterally served deposition notices on the Defendants to depose Phil Bryant, the Governor of the State of Mississippi; John Davis, the former Executive Director of the Mississippi Department of Human Services ("MDHS"); David Barton, the current Deputy Executive Director of Administration of MDHS and former Inspector General of MDHS, and Eric Johnson, the MDHS Director of Investigations. Each of these deposition notices demanded that the deponent bring to his deposition "Any report that you have prepared, participated in, or had any part in writing with regard to the investigation of maltreatment and report regarding the death of the child A.H."

2. The requested depositions relate to an investigation conducted by MDHS at the request of, and on behalf of, MDCPS relating to the death of a minor child, A.H., who at the time

of her death was not in MDCPS custody and was not a member of the *Olivia Y* class. None of the potential deponents have first-hand knowledge of any events that transpired prior to A.H.'s death.

3. In a discovery dispute telephone conference held on September 18, 2019, United States Magistrate Judge Keith Ball held the deposition notices were a nullity.

4. On September 30, 2019, Plaintiffs filed Plaintiffs' Motion for Amended Case Management Order Permitting Limited Discovery ("Plaintiffs' Motion to Reopen Discovery").

5. For the reasons set forth in Defendants' Memorandum In Support of Their Response And Objection to Plaintiffs' Motion to Reopen Discovery ("Defendants' Memorandum"), which is incorporated and adopted in this Response and Objection, the Plaintiffs' Motion to Reopen Discovery should be denied.

6. Defendants also adopt and incorporate in this Response and Objection, the following exhibits relied on and referenced in Defendants' Memorandum:

Ex. A Affidavit of Tonya Rogillio

Ex. B Affidavit of Kris Jones

Ex. C September 26, 2019 Email from Public Catalyst (Eileen Crummy, Lisa Taylor, and Kevin Ryan)

WHEREFORE, Defendants request that the Court deny Plaintiffs' Motion to Reopen Discovery because Plaintiffs have failed to establish good cause for reopening discovery. If the Court determines that discovery should be reopened, Defendants reserve any objections to the discovery actually filed by Plaintiffs including all objections relating to the scope of discovery as well as all objections to the deposition of the high-ranking governmental officials Plaintiffs seek to depose. Alternatively, Defendants request leave of court to supplement this Response And Objection and Defendants' Memorandum to address these objections.

RESPECTFULLY SUBMITTED, this the 15th day of October, 2019.

PHIL BRYANT, as Governor of the State of Mississippi, JESS H. DICKINSON, as Commissioner, Mississippi Department of Child Protection Services, and TRACY MALONE, as Deputy Commissioner of Child Welfare, Mississippi Department of Child Protection Services

By: /s/ William C. Pentecost

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